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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,840	09/08/2003	Mark W. Kroll	A03P1062US03	1754

36802 7590 02/16/2007
PACESETTER, INC.
15900 VALLEY VIEW COURT
SYLMAR, CA 91392-9221

EXAMINER

JOHNSON, SHEVON ELIZABETH

ART UNIT	PAPER NUMBER
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3766

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/657,840	Applicant(s) KROLL ET AL.	
	Examiner Shevon E. Johnson	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/27/2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5,8-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) 1,6,7 and 11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5,8-10 and 12-14 is/are allowed.
- 6) ☒ Claim(s) 15 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 16-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on 11/27/2007. Claims 2-5, 8-10 and 12-20 are currently pending. Applicant's arguments, see 7-9, filed 11/27/2007, with respect to claims 2-5, 8-10 and 12-14 have been fully considered and are persuasive. The 35 U.S.C. 102 rejections of claims 2-5, 8-10 and 12-14 have been withdrawn. Applicant's arguments with respect to claims 15 and 18-20 have been considered but are moot in view of the new ground(s) of rejection.

Specification

2. The disclosure is objected to because of the following informalities: cross-reference to related applications on page one of the specification should be updated to include the serial number of each copending application and the status of that application. If the application is now a patent the patent number should be included.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15, 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Florio (U.S. Patent No. 6,324,427) in view of Olson et al. (U.S. Patent No. 6,731,978).

In regards to claims 15 and 18-20, Florio (col. 11, line 31 – col. 16, line 10; col. 18, lines 12 - 64) discloses the stimulation device for performing antitachycardia pacing (ATP) therapy except the method for delivering ATP therapy if both a primary pacing pulse and a backup pulse are not captured. However, Olson et al. teaches a method wherein the controller may apply different set of rules where appropriate. Particularly, apply a rule wherein if certain conditions are not met the controller can inhibit the delivery of antiarrhythmia therapy until a rule is met or the controller deems it necessary in a special situation (col. 2-3 and col. 16, lines 34-48, Figs. 2 and 11). Therefore, it would have been obvious to one of ordinary skill in the

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art to have incorporated the method as set forth by the controller as taught by Florio for the controller as disclosed by Bradley to provide a antitachycardia therapy to a patients heart.

Allowable Subject Matter

5. Claims 16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 2-5, 8-10 and 12-14 are allowed. The following is a statement of reasons for the indication of allowable subject matter: see Applicant's arguments, see 7-9, filed 11/27/2007, with respect to claims 2-5, 8-10 and 12-14.


Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shevon E. Johnson whose telephone number is (571) 272-2010. The examiner can normally be reached on M-F (8 a.m. - 4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shevon Johnson
Art Unit 3766


Robert Pezzuto
Supervisory Patent Examiner
Art Unit 3766